

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

DAVID D. HENWOOD, CIVIL ACTION NO. 3:01CV996
PLAINTIFF

VS.

MAY 18, 2004
UNISOURCE WORLDWIDE INC. &
GEORGIA-PACIFIC CORP., VOLUME II
DEFENDANTS

CONTINUED DEPOSITION OF DAVID D. HENWOOD

APPEARANCES:

FOR THE PLAINTIFF:

WOFSEY, ROSEN, KWESKIN & KURIANSKY
600 Summer Street
Stamford, Connecticut 06901
By: DANIEL M. YOUNG, ESQUIRE

FOR THE DEFENDANTS:

HUNTON & WILLIAMS
951 East Byrd Street
Richmond, Virginia 23219
By: C. RANDOLPH SULLIVAN, ESQUIRE

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2
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1 . . .Deposition of DAVID D. HENWOOD,
2 taken on behalf of the Defendants in the above-
3 entitled cause, wherein David D. Henwood is
4 Plaintiff and Unisource Worldwide Inc., Et Al, are
5 Defendants, pending in the United States District
6 Court, District of Connecticut, pursuant to notice,
7 before Walter J. Krzepek, a Notary Public in and for
8 the State of Connecticut, County of New Haven, held
9 on May 18, 2004, at 10:30 o'clock A.M., at Wofsey,
10 Rosen, Kweskin & Kuriansky, 600 Summer Street,
11 Stamford, Connecticut, at which time the parties
12 were represented as hereinbefore set forth and Mrs.
13 David D. Henwood was also present. . .

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1 DAVID D. HENWOOD
2 Having been called as a witness, having been
3 previously sworn, continued to testify upon his oath
4 as follows:

5
6 MR. YOUNG: I'd just like to state I
7 think we're in complete agreement this is a limited
8 deposition and it's being taken pursuant to your
9 request and the court's order, that limited
10 discovery can occur solely on the issue of
11 promissory estoppel.

12 MR. SULLIVAN: We agree.

13
14 CONTINUED DIRECT EXAMINATION

15 BY MR. SULLIVAN:

16 Q Mr. Henwood, good morning.

17 A Good morning.

18 Q I don't think this is going to take a lot
19 of time and I agree with what Dan said, this is your
20 continued deposition for purposes of asking
21 questions about the promissory estoppel claim that
22 has been added to your complaint.

23 So, obviously, we're going to focus
24 from the allegation that you made as to statements

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1 made to you by Mr. Fitzgerald.

2 Do you know, is Mr. Fitzgerald still
3 alive; do you know?

4 A I don't know.

5 Q You're not aware of his passing away?

6 A No.

7 Q Do you recall when the last time was that
8 you spoke with him, whether it was when you were
9 both at PCUS or sometime thereafter?

10 A My best recollection is it was at his
11 retirement party.

12 Q Do you remember when that was, ballpark?

13 A I don't remember when it was.

14 Q Do you recall how long you and Mr.
15 Fitzgerald worked together with PCUS?

16 A It was at least five years. It might have
17 been seven. I'd have to go back and look.

18 Q Just for clarification purposes, I take it
19 you're not, at least based on your complaint, you're
20 not relying upon statements made by anybody else
21 other than Mr. Fitzgerald for purposes of your
22 promissory estoppel claim; is that right?

23 MR. YOUNG: Objection to the form,
24 just to the extent you're asking the witness for a

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1 legal conclusion of what's going to support the
2 claim, he might not be fully aware of, but I'll
3 allow you to answer.

4 Q As we sit here today, at the deposition,
5 are you relying upon any other statements other than
6 statements made to you by Robert Fitzgerald for
7 purposes of the amended claim; the promissory
8 estoppel claim?

9 A You'll have to clarify that because there
10 were, as I said, there was just that period of time
11 that I worked directly for him but I was there
12 longer, obviously.

13 Q I guess what I'm asking, you had made --
14 and we're going to go through the amended complaint
15 -- you made allegations that Mr. Fitzgerald made
16 statements to you about providing support and not
17 interfering with the Watchtower, and we'll go
18 through those as far as your amended complaint, but
19 are there any other statements not focused on Mr.
20 Fitzgerald but any other statements by anybody else
21 that you're saying were promises made by Georgia-
22 Pacific that were not fulfilled?

23 A I am relying on other promises that were
24 made.

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1 Q We'll come back to those. I want to be
2 sure I understand exactly what the nature of your
3 complaint is as far as A.T. Clayton and we spent
4 time initially in your deposition talking about your
5 experience, your lawsuit against A.T. Clayton.

6 Did you work anywhere else in between
7 A.T. Clayton and PCUS?

8 A No.

9 Q My recollection is that you had an actual
10 written contract with A.T. Clayton?

11 A Yes.

12 Q The claim was they had breeched that
13 contract?

14 A Yes.

15 Q Do you recall what the contract provided
16 for, generally, in terms? Was it only compensation
17 terms or did it also include other things?

18 A It included a variety of promises.

19 Q Do you remember -- obviously we haven't
20 seen the contract but do you remember what other
21 promises it included?

22 MR. YOUNG: I just object to the
23 form. I'm not sure we've established it was a
24 breech of contract; when you said have you seen it.

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1 MR. SULLIVAN: I believe Mr. Henwood
2 said it was a written contract.

3 Q But was it a written contract?

4 A Yes.

5 Q I know it's hard to remember. That was,
6 whatever, 20 years ago but do you recall what terms
7 the contract generally provided?

8 I assume there were compensation
9 terms?

10 A It was, essentially, the same conditions
11 that existed with the contract I had with PCUS.

12 Q What were those conditions?

13 A That I would earn a percentage of the
14 gross margin, that I would receive the normal
15 benefits that an employee has such as retirement
16 benefits, pension benefits, health benefits, et
17 cetera.

18 That I would continue to receive full
19 support from the company for the accounts that were
20 mine, or accounts that I brought to the company.

21 That the company would strive to
22 assist me in every way possible to enhance and grow
23 the accounts that I brought with me or gained during
24 my employment.

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1 Essentially, that was it.

2 Q The nature of the lawsuit that you brought
3 against A.T. Clayton was that it had failed to pay
4 commissions that were owed to you under the
5 contract?

6 A Yes.

7 Q Were there any other allegations that you
8 were making as far as failure to support or
9 interference with accounts, that sort of thing?

10 A Not to the best of my recollection.

11 Q Do you recall whether the contract said
12 anything specifically, the contract between yourself
13 and A.T. Clayton, about the Watchtower?

14 A It did not, to my recollection.

15 Q Did your experience with A.T. Clayton, you
16 know, leading to the lawsuit make you, I guess,
17 suspicious, for lack of a better term, of employers
18 with respect to your working as a sales
19 representative?

20 A No.

21 Q It didn't? Okay.

22 When you left the employment with
23 A.T. Clayton you then started with P.C. West,
24 correct?

9
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1 A Yes.

2 Q Did you know Mr. Fitzgerald prior to
3 communicating with him about employment
4 possibilities?

5 A No.

6 Q How did that come about? How did your
7 interaction with him come about, talking about
8 employment?

9 A I believe I testified to this before but
10 it came as a result of a contact made by a
11 headhunter.

12 Q Who else were you talking with, other
13 employers at that time, other than PCUS?

14 A It was through him.

15 Q Through the headhunter?

16 A Yes.

17 Q Do you recall who those were?

18 A Well, I know I testified to this before.
19 I'd have to go back and look at the deposition.

20 One that comes to mind was Gould
21 Paper Company and Clifford Paper Company.

22 Q Do you know where Gould paper is
23 headquartered?

24 A I believe its New York City.

10
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1 Q And what about Clifford?

2 A I believe they are headquartered in New
3 Jersey.

4 Q Take me through -- I don't think we got
5 into this level of detail earlier in your deposition
6 but how many discussions, if you remember, did you
7 have with Mr. Fitzgerald before you began employment
8 with PCUS?

9 A I don't recall.

10 Q Was it just one?

11 A No, it was more than one.

12 Q To the best that you could remember,
13 because you're basing your claim on statements that
14 he made to you, tell me what discussions there were;
15 I mean what he said, what you said, to the best you
16 can recall, about your employment with PCUS?

17 A He indicated that he was knowledgeable
18 about the owner of A.T. Clayton and that he was very
19 much aware of the job that I had done for them.

20 He was very anxious to acquire this
21 account.

22 Q Referring to Watchtower?

23 A Yes. And that if I could do that kind of
24 a job with Watchtower, then the likelihood would be

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1 that I could do it with others.

2 That he was a president within a
3 public corporation and he would run a risk of losing
4 his own job if he were to try and somehow
5 shortchange a salesman on his commissions.

6 That they had people above him in the
7 management team that were lifetime members of the
8 paper industry, well known to the paper mills and to
9 many, many large and small customers.

10 That they had a strong team in terms
11 of being able to manage things like accounts
12 receivable and back-up personnel available for
13 inside sales purposes, which is important.

14 He was very clear to assure me that
15 he would never give me cause for concern in terms of
16 being straightforward in his dealings with me
17 regarding commission payments.

18 That he was willing to pay me a
19 salary for the time it took to reestablish the
20 account with PCUS.

21 That he personally could guarantee
22 that any management personnel from the parent
23 corporation, that were appropriate in a given
24 circumstance, he could make available to me.

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1 In other words, he was endeavoring to
2 show me that he and the company that he was the
3 president of were certainly as capable and hopefully
4 more capable than anybody else I could talk to in
5 furthering my efforts to build a substantial
6 customer base and that he would support that in
7 every way possible.

8 Q To touch on a couple of things you just
9 said, when you said that he stated that because he
10 was president of a corporation he could risk losing
11 his job if he shortchanged a sales rep on
12 commissions, what was the context for that coming
13 up, if you remember?

14 A Only that A.T. Clayton is a private
15 company.

16 Q But the context of him making that sort of
17 statement, do you remember what you all were talking
18 about when that came up?

19 Let me rephrase that.

20 Was that in the context of you
21 telling him about the lawsuit?

22 A There was no lawsuit then.

23 Q The lawsuit you had prior with A.T.
24 Clayton?

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1 A No.

2 Q Do you remember what the context was? I'm
3 just asking because it seems like an odd thing for
4 him to, me too, odd for him to just volunteer that.

5 MR. YOUNG: Randy, can I correct your
6 assumption you made in the last question?

7 I'm not sure when the lawsuit was.
8 You just said it was prior to the time of this.

9 MR. SULLIVAN: Okay.

10 Q When did you file the lawsuit against A.T.
11 Clayton?

12 A Within a few months of joining PCUS.

13 Q So you had already began work with PCUS
14 before that was actually initiated?

15 A Yes.

16 Q When you were talking with Mr. Fitzgerald
17 did you tell him about your concerns, I guess, about
18 the way A.T. Clayton had paid you?

19 A Yes.

20 Q Was this statement -- did this come up in
21 that context, do you recall?

22 A What statement is that?

23 Q The statement about him being president of
24 a public corporation and risk losing his job if he

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1 shortchanged you on commissions?

2 A Yes.

3 Q Why did you tell him about your
4 perceptions of being shortchanged, by putting words
5 in your mouth, being shortchanged by A.T. Clayton?

6 A Because we were down to the point of his
7 wanting to know why I would want to leave A.T.
8 Clayton; what were the things that were in my mind,
9 that I was actively pursuing other opportunities in
10 the industry.

11 Q At the time that you were talking to Mr.
12 Fitzgerald, about going to work for PCUS, I take it
13 you knew that because of your relationship with the
14 Watchtower that you could bring that account to PCUS
15 from A.T. Clayton?

16 A I haven't got a way to answer that
17 question.

18 Q You didn't know whether or not Watchtower
19 would follow you to PCUS?

20 Let me ask it this way.

21 At that point in time, when you were
22 talking with Mr. Fitzgerald about employment for
23 PCUS, what was your thought as to whether or not you
24 would be able to bring the Watchtower account with

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1 you from A.T. Clayton?

2 A I felt certain I could do it.

3 Q Why was that?

4 A Because the supplier at that point was
5 failing in their ability to produce a suitable
6 product.

7 Q When you talk about supplier you're not
8 talking about A.T. Clayton, you're talking about the
9 paper mill?

10 A Yes, our supplier.

11 Q Just out of curiosity, who was that at
12 that point?

13 A Georgia-Pacific.

14 Q This statement that you're saying -- well,
15 was there anything else that you remember about your
16 discussions with Mr. Fitzgerald concerning your
17 employment, any other statements that he made to you
18 other than what you've already talked about?

19 A He volunteered that, for instance, if we
20 had occasion to -- and this didn't pertain exactly -
21 - you're asking just in reference to Watchtower?

22 Q Well, generally. I mean certainly
23 including Watchtower but generally statements that
24 he made to you about your employment?

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1 A That, initially, if there was a need to do
2 some expensive entertaining that the company would
3 pick that up, pick up the cost of that, but he
4 emphasized the intimacy of the involvement he had
5 with his sales people in terms of assisting them
6 with every asset possessed by the company at large;
7 in particular, to gain new business, build the
8 business that you already established and any --
9 whatever that might mean. It was unknown at that
10 point, what the particular issue might be, but he
11 emphasized that.

12 Q Did you down the road, when Watchtower
13 became a client of PCUS -- I mean earlier in your
14 deposition you talked about with Dan Romanau,
15 trying to keep him out of, sort of, the day to day
16 dealings with Watchtower.

17 Did you do the same thing with Mr.
18 Fitzgerald?

19 A No.

20 Q What was his involvement with the
21 Watchtower account, as you got that going with PCUS?

22 A We talked about it frequently, whatever
23 the issue was at the time.

24 He assisted me in working with

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1 potential suppliers.

2 Ask the question again? I'm missing-

3 -

4 Q I was trying to get a sense, based on your
5 statement about Dan Romanau that you tried to keep
6 him out of the day to day works, was trying to get a
7 sense of Mr. Fitzgerald's involvement with you in
8 working with the Watchtower account during the time
9 that he was president, whether he was actively
10 involved or --

11 A He was actively involved.

12 Q You said you had conversations with him
13 regularly about the account and about the supplier
14 situation?

15 A That's correct.

16 Q Let me go back to one of the things you
17 said as far as comments he made to you before your
18 employment.

19 When he stated that he would support
20 you and the company would support you, did he
21 elaborate on what that meant specifically or was
22 that in the context of all those other things that
23 you said?

24 I guess what I'm asking is the word

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1 support. Did he specifically talk about what that
2 meant?

3 A Well, I think I've already testified to
4 that.

5 He was very clear and unequivocal in
6 his promises to me, that we wouldn't be dealing with
7 a sort of negative situation.

8 We would be dealing with a very
9 positive situation. That it would be -- he would be
10 actively assisting me in every way he possibly
11 could, to generate the business.

12 Q Earlier in your deposition you had
13 indicated that at no point during your employment
14 with PCUS was there a contract between Watchtower
15 and either you specifically or PCUS?

16 A That's right.

17 MR. YOUNG: Objection to the form. I
18 think the testimony was that the purchase orders
19 were contracts.

20 Q But there was no contract, requiring
21 Watchtower to continue purchasing paper through
22 PCUS?

23 A There was no written contract beyond the
24 purchase orders.

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1 Q Was there some sort of verbal contract
2 requiring Watchtower to purchase paper through PCUS?

3 A There was an understanding that we would
4 make every effort -- no, it's more than that.

5 It was that -- first of all the
6 orders they place, were not for just the immediate
7 future. They were generally a year at a time and so
8 that would always be honored, unless there were some
9 unforeseen circumstances that prevented the thing
10 from happening.

11 Q I guess my question is, Watchtower if they
12 wanted to could take their business elsewhere?

13 A At some point, yes.

14 Q What do you mean by at some point?

15 A We had agreed that we would endeavor to
16 work together to the maximum degree possible and if
17 it were not going to work out, it would be a
18 collective judgment that one was not going to
19 operate and leave the other hanging in space because
20 of the large commitment that evolved.

21 Q Who was that agreement with?

22 A Max Larson, Ralph Lindem; together.

23 Q That was just a verbal understanding
24 between the three of you?

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1 A It was the result of a variety of
2 discussions, yes.

3 Q But again that didn't prevent them from
4 taking their business elsewhere, correct?

5 A No. Well, I'm not -- it would prevent
6 them in the sense of the level of -- the strength of
7 the commitment they would have made verbally.

8 Q I'm not sure I'm following you. What do
9 you mean?

10 A Well, that they wouldn't act
11 precipitously, my feeling was, and I think it
12 appears to me we were acting in good faith.

13 Q But nothing required them to purchase
14 paper from PCUS for a two-year period, as an
15 example?

16 A No.

17 Q I don't think I ever asked you this. Did
18 you feel like when Watchtower ultimately took its
19 business from Fraser, they had violated some sort of
20 agreement with you?

21 MR. YOUNG: I'll object because I
22 think this line of questioning is not part of the
23 promissory estoppel claim.

24 MR. SULLIVAN: I think it is. You're

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1 talking about his reliance and his expectations
2 coming in to working with PCUS.

3 MR. YOUNG: Okay. You could answer.

4 THE WITNESS: Can I clear up
5 something before I answer that question?

6 MR. YOUNG: You need to answer Mr.
7 Sullivan's question, then we can take a break if you
8 want.

9 A Would you ask it again?

10 Q Sure. I'm just -- my recollection -- the
11 reason I'm even asking these questions is my
12 recollection from your earlier deposition testimony
13 was that it was clear that there was no contract
14 binding the Watchtower to continue purchasing from
15 PCUS.

16 And it sounds like what we're talking
17 about now is a little bit different than that.

18 I'm trying to figure out, did you
19 believe when the Watchtower ultimately went direct
20 with Fraser that Watchtower had in some way violated
21 some agreement with either you personally or with
22 PCUS?

23 A I can't answer the question in the form
24 it's stated.

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1 Q How can you answer? I mean what's
2 difficult about that question?

3 A The difficulty is in that there were
4 several parties involved and the form is not -- it's
5 not in a form that I can answer.

6 Q It's not a complicated question, Mr.
7 Henwood.

8 You testified and Mr. Rittenbach has
9 testified that Watchtower for a long period of time
10 thought about going direct with Fraser Papers.

11 MR. YOUNG: Objection to form. I
12 don't think he testified to that.

13 MR. SULLIVAN: Mr. Henwood did not?

14 Q Well, I'm not trying to put words in your
15 mouth but there's evidence, at least from Mr.
16 Rittenbach, there was a thought process of going
17 direct for Fraser Papers for a number of years.

18 All I'm asking is, if you know, when
19 Watchtower did that. Forget about the other
20 parties.

21 Aside from Watchtower and PCUS, did
22 you believe that Watchtower was doing something that
23 violated some sort of an agreement with PCUS?

24 A No.

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1 MR. SULLIVAN: Okay, you guys want to
2 take a break?

3 MR. YOUNG: Yes.

4 (Recess)

5 MR. YOUNG: I think Mr. Henwood's
6 confusion about the question was, just as we've been
7 over in prior depositions, Mr. Henwood's feelings
8 that there were other parties that weren't doing
9 what they had promised to do, like not just
10 Unisource but Fraser, that made a commitment to sell
11 -- to not sell directly with respect to the paper.

12 And his confusion with your question
13 was just to the extent he thought you were trying to
14 isolate the question and say that Watchtower was
15 privileged to do this and that Fraser was privileged
16 to do it also.

17 As you understand, as Mr. Henwood
18 previously testified, our position is that Fraser
19 had made a commitment to the paper community that it
20 wouldn't sell the type of paper exclusively.

21 MR. SULLIVAN: I'll just object to
22 the extent that I don't -- that his testimony
23 doesn't actually reflect that but I'm not saying it
24 does or doesn't. I'm just saying I don't recall.

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1 I was just asking about Watchtower,
2 if they at any point in time -- forget about the
3 circumstances that you're alleging here.

4 BY MR. SULLIVAN:

5 Q I think you already answered the question
6 now but if the Watchtower at any point in time
7 elected to buy from somebody else, they weren't
8 violating any agreement with PCUS if they did that,
9 were they?

10 A No.

11 I would like to interrupt for a
12 second and just go back to the earlier part of the
13 testimony on the discussions with Fitzgerald.

14 Several points, one of which was the
15 commission rate, 45 percent, that was clearly a
16 promise that he had made verbally and in writing.

17 We had a lot of discussions regarding
18 the nature of the Watchtower, the Jehovah's
19 Witnesses and how they operated.

20 The length of time that I had done
21 business with them made me privy to the intricacies
22 of their way of doing business.

23 A good for instance was the fact that
24 they had no formal hierarchy. Everybody was really

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1 the same. As a practical matter, wasn't the case
2 but for the record that's how they wanted it and
3 there were issues that you could bring up with
4 Newsweek that you would never discuss with the
5 Watchtower.

6 One of those would be you'd never ask
7 them who their suppliers were. It was something
8 that they would just not discuss and that you needed
9 to have a good knowledge of the demands they made in
10 terms of the service they expected from a supplier,
11 from whoever it might be, in order to successfully
12 continue to do business with them.

13 And so we pursued that at great
14 length because there were so many thoughts to it and
15 he assured me over and over again that he understood
16 what I was driving at.

17 It was a unique and unusual situation
18 and that being able to do that would make me a
19 valued employee, if I'm able to continue to do the
20 working for PCUS.

21 Q If you were able to bring the Watchtower
22 account in and continue to service it?

23 A Right.

24 Q Let me go back to one thing you said

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1 earlier, that you were certain that the Watchtower
2 would come over as an account to PCUS but you didn't
3 know that for a fact.

4 I take it there was no commitment by
5 the Watchtower to come over with you to PCUS?

6 A No.

7 Q You couldn't rely, based on what we've
8 just been talking about, you couldn't rely on
9 servicing the Watchtower account for any particular
10 length of time because the Watchtower could take
11 their business elsewhere, correct?

12 MR. YOUNG: Objection. You can
13 answer.

14 A Would you ask it again, please?

15 Q Sure. You couldn't rely on servicing the
16 Watchtower account for any specific period of time
17 because the Watchtower could take their business
18 elsewhere, correct?

19 A I could rely on -- no.

20 Q Mr. Fitzgerald never said to you that you
21 would always service the Watchtower account for
22 PCUS, right?

23 A Oh, he absolutely did as long as it was an
24 account of PCUS.

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1 Q He specifically said those words?

2 A I believe so, to the best of my

3 recollection.

4 Q When did he say that?

5 A It was early in the discussions I had with

6 him, regarding going to work for him.

7 Q What exactly did he say?

8 A Well, that's the best of my recollection.

9 I don't recall exact words but that was the sum and

10 substance of it.

11 Q Tell me what the sum and substance was

12 because I don't want to -- I want to be sure I'm

13 understanding what you're saying.

14 A You can be sure that no one would

15 interfere in any way with your handling and

16 maintaining this account as your account, as long as

17 you're with the company; unless, of course, you had

18 some outside reason -- not outside reason but unless

19 you had done something overt that would have

20 fractured the relationship.

21 Q And he specifically said those words to

22 you or the best you can remember?

23 A Well, he was saying it not only in terms

24 with Watchtower but any account.

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1 The context was the salesman brings
2 in an account, it's his account and no one would
3 interfere with it. We would do everything we could
4 to try and help it grow and help you make it grow.

5 Q And that's true, I mean to the extent you
6 know, that's true for any sales rep who brings an
7 account in or has an account, correct?

8 A Well, I don't know about other people. I
9 know what our conversation was.

10 Q You don't know what Mr. Fitzgerald told
11 other sales reps that he was bringing into PCUS?

12 A No.

13 Q But I take it he never said to you that
14 you would continue servicing the Watchtower account,
15 even if Watchtower came and said we're not going to
16 work with Mr. Henwood?

17 A We never had a discussion about that.

18 Q So he never made that statement?

19 A No.

20 Q You said he made the statement before you
21 began employment or after the statement you were
22 just talking about?

23 A I believe it was before.

24 Q I take it, based on the way you already

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1 answered the question, Mr. Fitzgerald never said to
2 you that you would keep the account if you did
3 something that lost or that caused Watchtower to
4 lose trust in you or faith in you?

5 A It was not a subject we discussed because
6 that's such a common sense issue, I guess. I had no
7 occasion to even think about it, nor discuss it.

8 Q Is there anything else? I'm just trying
9 to be sure we're covering all the bases.

10 Anything else that Mr. Fitzgerald
11 said to you in your discussions about employment
12 with PCUS that you're relying upon in this lawsuit,
13 as part of your promissory estoppel claim?

14 MR. YOUNG: Just to clarify, other
15 than what he's previously testified?

16 MR. SULLIVAN: Other than what he
17 testified to.

18 MR. YOUNG: At other depositions.

19 A I may be missing something that's
20 important but it's not coming to mind at the moment.

21 Q Mr. Henwood, let me put in front of you --
22 we don't need to mark it because it's already an
23 exhibit.

24 This was marked Plaintiff's Exhibit

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1 No. 1 for purposes of your deposition back on
2 September 25, 2002.

3 And this, as I recall, this is the
4 written document that you are relying upon for
5 purposes of saying that you had a written contract
6 with PCUS, the written portion of it?

7 A Yes.

8 Q Obviously, the document speaks for itself
9 but is it fair to say that there's nothing in this
10 letter from Mr. Fitzgerald to you that states that
11 either he or PCUS will provide support to you,
12 nothing expressly says that, and you can take your
13 time and read it.

14 MR. YOUNG: Just object. The
15 document speaks for itself. I'm not sure what your
16 question is.

17 A Well, I think even the last sentence, if
18 you feel confident, that would imply all the things
19 I already stated.

20 Q Obviously we're not -- all I'm asking is,
21 there's nothing -- the word support is not written
22 in this contract?

23 A No.

24 Q There's nothing in this document that says

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1 that you will always have the Watchtower account,
2 specifically?

3 A No.

4 Q Did you ask for -- let's take that point
5 as an example, your servicing of the Watchtower
6 account.

7 Did you ask for something to be in
8 writing saying that you would be the exclusive sales
9 rep for the Watchtower account?

10 A No.

11 Q How come?

12 A It was clearly understood that that was
13 the ground rules.

14 Q Weren't you -- I mean just being in the
15 midst of the A.T. Clayton situation and not knowing
16 Mr. Fitzgerald before, weren't you uncomfortable
17 just taking his statements, you know, without having
18 something in writing?

19 A I wasn't uncomfortable at all.

20 Q You talked about the other employers Gould
21 and Clifford that you were seeking employment from
22 at that point.

23 Why did you think that PCUS was a
24 better fit for you, I guess for lack of a better

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1 term, then either Gould or Clifford?

2 A Well, Paper Corp had been in business a
3 very long time and had a very fine reputation and
4 had access to most of the paper mills in the
5 country, which I needed as an opportunity to --
6 well, that was the principle -- those were the
7 principle things.

8 Q Was PCUS offering you -- the letter refers
9 to the commission you'd be paid.

10 Was PCUS offering you a higher
11 commission then Gould or Clifford?

12 A No.

13 Q Were they the same commission rates?

14 A Approximately.

15 Q Do you recall what Gould was offering you
16 by way of commission rate?

17 A To the best of my recollections they were
18 all essentially the same, when you netted them out.

19 Q To the best of your recollection, when
20 were you talking with individuals from Gould and
21 Clifford in comparison to when you were talking with
22 Mr. Fitzgerald about employment?

23 A The conversations were not directly with
24 them, they were through the headhunter.

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1 Q I take it you didn't have any direct
2 communication with Gould?

3 A No.

4 Q And no direct communication with Clifford?

5 A Right. Yes.

6 Q Did you have a job offer from Gould?

7 A No.

8 Q Did you have a job offer from Clifford?

9 A No.

10 Q I'm just asking at the time you accepted
11 the PCUS employment.

12 MR. YOUNG: Was that the end of the
13 last question?

14 MR. SULLIVAN: Yes. He already said
15 no. I was just clarifying at the time.

16 Q Is your answer still the same? The time
17 I'm asking about is when you accepted employment
18 with PCUS.

19 A Yes.

20 Q If Mr. Fitzgerald had not made all the
21 statements that you talked about Mr. Fitzgerald
22 making to you, if he had not made those statements,
23 would you have accepted employment with PCUS?

24 A I have no way to answer that.

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1 Q In terms of -- and you've already -- I
2 mean you've already talked about your relationship
3 with Watchtower.

4 Fair to say that at the time you
5 started with PCUS you certainly believed that you
6 knew the Watchtower account, more about their
7 service needs than any other sales rep as far as the
8 paper that you were selling them?

9 A I believed that I knew the Watchtower
10 account and their requirements.

11 Q Why were you concerned -- well, were you
12 concerned about another sales rep, internally, PCUS
13 or Unisource being able to take your place with the
14 Watchtower?

15 A No.

16 MR. YOUNG: I'm sorry, the no was
17 because you said why, then you said --

18 MR. SULLIVAN: Changed it to were you
19 concerned about it.

20 MR. YOUNG: Okay.

21 Q I take it, based on what you've already
22 testified to, at any point in time during your
23 employment with PCUS or later Webservice for that
24 matter you could have because the Watchtower

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1 relationship was with you, you could have taken the
2 Watchtower somewhere else if you wanted to change
3 employers?

4 A Yes.

5 Q You didn't have any sort of non-compete
6 agreement I take it with PCUS or with Unisource?

7 A No.

8 Q Did you ever try to take the Watchtower
9 account somewhere else other than PCUS or Unisource?

10 A No. Let me qualify the second to last
11 question.

12 Well, let's let it go at that.

13 Q If you at some point in time -- and this
14 is sort of getting back to the crux of the lawsuit
15 but if you felt like Unisource or Webservice --
16 Unisource collectively to include Webservice and PCUS
17 -- was not supporting you properly with the
18 Watchtower account, why didn't you just change
19 employers and take Watchtower with you?

20 A I didn't have any knowledge of what they
21 were up to.

22 Q Well, at the point in time that you --
23 let's say December of 1999, when you had -- I
24 believe your testimony was you had met with Wayne

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1 Rittenbach, you had met with Fraser representatives
2 and at that point, November-December '99, you knew -
3 - well, in fact, you met with Jim O'Toole, by that
4 point you knew you were not going to continue --

5 MR. YOUNG: I don't believe that's
6 correct.

7 Q -- servicing --

8 MR. SULLIVAN: Okay, let me finish
9 the question. Let me go back. I sort of lost my
10 train of thought.

11 MR. YOUNG: Sorry.

12 Q As of November-December of 1999 -- I don't
13 want to go back and ask you questions that we've
14 already been asking but I do want to set a time
15 frame.

16 My recollection is and as testimony,
17 your testimony, will reflect what's already been
18 said but you had met with Watchtower, you met with
19 Fraser and you were aware that you were not going to
20 continue servicing the Watchtower account; is that
21 right?

22 A When are you talking about?

23 Q Let's say December of 1999.

24 A I was aware of what had been said to me.

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1 Q But what had been said to you, you were
2 not going to continue servicing the Watchtower
3 account?

4 A Who are we talking about here?

5 Q I'm just asking you generally, your
6 knowledge. I mean I'll put it in front of you, it's
7 already an exhibit but the letter that you wrote to
8 Paul Stewart dated December 3rd of '99.

9 If you turn back to Page 5, as an
10 example, there's a statement towards the top.

11 Jim O'Toole has filled me in on the
12 substance of the December 1 meeting with Watchtower;
13 and I believe that the evidence that's already in is
14 that the December 1 meeting with Watchtower was the
15 meeting that O'Toole had with Rittenbach where, you
16 know, it was clear that you were not going to
17 continue to service the Watchtower account.

18 Is that what you're referring to with
19 this statement with Jim O'Toole?

20 A Yes.

21 Q Just using that as a time reference why
22 not at that time, December '99, after December 3,
23 why not move to a different employer and take the
24 Watchtower account with you?

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1 A Because I had yet to have the opportunity
2 to enlist the aide of the management, upper
3 management, of the company, which would be the
4 normal recourse I would use first.

5 Q One of your allegations, and correct me if
6 this is wrong, in this lawsuit is that Unisource did
7 not provide the support that you were seeking at
8 this point in time; correct?

9 A They hadn't yet, no.

10 Q Did Unisource later provide the support
11 you were seeking?

12 A No.

13 Q At some point in time, in the year 2000,
14 why not seek different employment and take the
15 Watchtower account with you at that point?

16 A It was my view, after a lot of reflection,
17 that based on the promises that Jim O'Toole had made
18 that he was sincere in his effort to try to rectify
19 whatever the circumstances were that had caused the
20 fracture with Watchtower and that if we were
21 successful together in the long run we would all
22 benefit from it.

23 Q I don't want to go back over stuff we
24 already covered.

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1 In the meantime, Watchtower went
2 direct with Fraser?

3 MR. YOUNG: I'm just going to object.
4 I'm not sure, when you say meantime.

5 Q I'm just saying at the point in time in
6 mid-2000, Watchtower went direct with Fraser?

7 A I don't believe that's the case. I don't
8 believe they had at that point.

9 Q We've already got that in the evidence but
10 at the time that you -- I mean you're alleging that
11 you were discharged but at the time that you left
12 PCUS, actually more properly Unisource at that
13 point, why not at that point seek other employment
14 and take Watchtower with you?

15 A Well because of the damage that they had
16 done to the relationship between PCUS, which I was
17 part of, and the supplier.

18 Q The damage that who had done?

19 A Unisource.

20 Q Are you referring to things you already
21 testified about?

22 A Yes.

23 Q But I thought your testimony was when you
24 met with Mr. Rittenbach, in November of '99, Mr.

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1 Rittenbach, you know, didn't blame you for anything
2 and in fact said that if you could assure him that
3 Mr. Romanaux would not continue on the account, that
4 he would be able to still work with you?

5 A That's correct.

6 Q So how -- I mean at that point what
7 changed in the year 2000, anything?

8 A Well the ongoing circumstance was that we
9 had spent many, many years developing Fraser as the
10 supplier to the paper corporation and that was still
11 a desired route and so that obviously is the line of
12 least resistance and if that could have been
13 rectified, it would have been in my interest and the
14 company's interest and in Watchtower's interest to
15 make that whole again.

16 Q You're talking about Fraser not ultimately
17 going directly with Watchtower?

18 A Correct.

19 Q I think you just said this but fair to say
20 when Unisource ultimately lost Watchtower as a
21 client as well, that Unisource suffered damage also;
22 Unisource lost a big account?

23 A Yes.

24 Q This may be an understatement but I assume

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1 I'm correct to say that you had a successful career
2 with PCUS?

3 A Yes.

4 Q And you made millions of dollars as a
5 sales representative?

6 A Yes.

7 Q And that income that you made was based
8 primarily on the Watchtower account?

9 A Yes.

10 MR. SULLIVAN: Let me just note for
11 the record that the December 3, 1999, letter that we
12 talked about a few minutes ago was Defendant's
13 Exhibit 7 for the Henwood deposition.

14 Q And Mr. Henwood, I want to go through the
15 amended complaint, the promissory estoppel portions
16 of it, real quickly.

17 I'm pretty sure that we have --

18 MR. YOUNG: Just to clarify, for the
19 record, this is the amended complaint dated January
20 21, 2004.

21 MR. SULLIVAN: That's right, because
22 there was an earlier amendment.

23 MR. YOUNG: Off the record.

24 (Discussion held off the record.)

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1 Q Mr. Henwood, turn to Page 4, if you will.

2 The first sentence in Paragraph 15 says, in hiring
3 the plaintiff, Mr. Fitzgerald represented to the
4 plaintiff, assured him that the company would do
5 everything in its power to support his relationship
6 with Watchtower.

7 I assume what you're referring to
8 here is the testimony you've already given this
9 morning?

10 A Yes.

11 Q Is there anything else about that that
12 you're alleging Mr. Fitzgerald said other than what
13 you've already testified to?

14 A I think it's important for the record to
15 understand that Watchtower was a unique account and
16 that to the best of my knowledge only a very, very
17 few people had ever successfully done business with
18 them on an extended basis.

19 And the reason for that was the
20 extraordinary amount of service and the intimacy
21 which you needed to know not only the people who
22 purchased the paper or the purchasing department but
23 also the entire manufacturing organization and how
24 it was -- how they were all entwined and that they

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1 were extraordinarily demanding.

2 That any question they have be
3 responded to accurately and most people -- this is
4 just a judgment on my part -- most people weren't
5 willing to put the time and effort into it, to do
6 it.

7 And because they purchased a
8 particular basis way of paper, which we went into
9 before, and were in the process of acquiring
10 expensive tailor-made printing presses from Germany,
11 bindery equipment that was by far the best I've ever
12 seen, they concerned themselves with every single
13 detail, from the labeling of the paper to how the
14 orders were written.

15 I know some of this is repetitive but
16 since you asked me, I think it's important to
17 emphasize.

18 Each one of those had to be attended
19 to and I made it my business to do so, had made it
20 my business to do so, and it required a lot of
21 pressure and negotiation and effort on my part, on
22 the part of the people that supported me; meaning
23 the inside sales people and management from not only
24 our own company but our supplier.

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1 And it was always a question of doing
2 these things to a degree that was sufficiently good
3 to enjoy their continued business.

4 And the reason I'm saying it this way
5 is that there were so many issues of varying
6 importance, on a virtually daily basis, that to try
7 to enumerate them all would take pages and pages of
8 minutia, which I'm sure you're not anxious to have
9 me do.

10 But it was different then doing
11 business with, for instance a Newsweek or Time Inc.
12 where it was primarily a commodity kind of product,
13 printed on commercial equipment, by some printing
14 supplier to them.

15 And this is a case where it's an in-
16 house printing operation, equipment owned by them,
17 people trained that were volunteers and trained by
18 them.

19 So all of those things were very
20 important. In their minds they were not in the
21 commercial world. They were competing, I guess, to
22 a degree with other religions but they wanted a
23 degree of perfection for the sake of the degree of
24 perfection.

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1 That was just their nature.

2 Q Okay. But other than what you've already
3 testified about this morning, I just want to be sure
4 we're covering all the basis, was there anything
5 else that Mr. Fitzgerald said to you in terms of
6 your employment that you are now relying upon with,
7 you know, your promissory estoppel claim?

8 A I've enumerated the things that I can
9 recall. There may have been others. I just have to
10 say that I -- if they come to mind I'll have to
11 mention them but for the moment that's what I can
12 recall.

13 Q In Paragraph 16 where it says, the
14 plaintiff believed and relied on those commitments,
15 I assume the phrase those commitments is talking
16 about everything you've already talked about this
17 morning?

18 A Yes.

19 Q This is repetitive but just to clarify
20 again, at the time you accepted employment with
21 PCUS, you did not have a job offer from any other
22 employer?

23 A No.

24 Q Where it says you relied on those

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1 commitments, how did you rely on those commitments?

2 A You'll have to clarify that question.

3 Q Paragraph 16, where it says the plaintiff
4 relied on those commitments I'm just asking how it
5 was that you relied upon them?

6 A My understanding was that if I produced
7 the business, they would follow through with their
8 responsibilities, in terms of paying me my
9 commission rate, supporting all of the requirements
10 for processing and getting it produced by the paper
11 mill, shipped on time, et cetera, et cetera,
12 collecting the money, not interfering with the
13 account obviously, not going behind my back and
14 having private conversations with the customer.

15 Nothing was done, to my knowledge,
16 until the very end. Not a single instance where
17 anyone contacted Watchtower.

18 And this was very -- that's another
19 promise that no one would contact Watchtower without
20 my prior knowledge.

21 Q Who made that promise?

22 A Fitzgerald.

23 Q What exactly -- is that what he said?

24 A That's what he said, right, and that

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1 included even the accounting department.

2 If there were debits or a credit that
3 one side or the other didn't understand, that they
4 would contact me before they contacted the customer.

5 Not because I would be able to
6 straighten it out but just so that there would be no
7 he said-she said situations, where I wouldn't have
8 first-hand knowledge of even the most relatively
9 minor circumstances.

10 Q I take it that's pretty typical for any
11 sales rep to know what's going on with his or her
12 account?

13 A This particular case it was to a far
14 greater degree than any other account I had ever
15 done business with, far greater.

16 Every single -- there was no issue
17 too small that gave someone the occasion to go and
18 talk to Watchtower, anyone at Watchtower, ahead of
19 my approval.

20 Q You had to approve somebody talking to
21 Watchtower?

22 A That's right.

23 Q Even if the president of Unisource wanted
24 to talk to them?

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1 A That was the understanding, yes.

2 Q That understanding was, you're saying,
3 with Mr. Fitzgerald?

4 A It was not only he but as time went on and
5 the account began to grow and grow, it was the
6 understanding with anybody that would concern
7 themselves with the account, right up to the
8 president of Unisource.

9 Q Did you ever discuss it with the president
10 of Unisource?

11 A Yes.

12 Q Who was that and when did that occur?

13 A That was with Ray Mundt and I don't
14 remember exactly when the occasion was but it was
15 probably one -- I don't remember the exact occasion
16 but I remember that we had a comment about it.

17 Q What was the conversation?

18 A That we, Watchtower and PCUS, had an
19 understanding that Ralph Lindem would be the
20 spokesman for Watchtower and that I would, in turn,
21 be the spokesman for PCUS-Unisource regarding all
22 issues, so that -- because there were so many people
23 in both companies that potentially could talk to one
24 another for one reason or another and this held true

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1 for Fraser also; that no one was to contact
2 Watchtower for any reason unless they had prior okay
3 from us.

4 Q I assume that changed when Wayne
5 Rittenbach became the purchasing manager for
6 Watchtower?

7 A No, it did not.

8 MR. YOUNG: Objection to form.

9 Q So you're saying that Wayne Rittenbach
10 didn't have authority to contact PCUS?

11 MR. YOUNG: I don't think there's
12 testimony Wayne Rittenbach became purchasing
13 manager. I think that's inaccurate.

14 MR. SULLIVAN: The testimony will
15 reflect what it reflects.

16 Q But are you saying Wayne Rittenbach did
17 not have authority to contact you or contact PCUS?

18 A Technically speaking, there was no
19 conversation with me that modified our prior
20 agreement.

21 Q Was this some written agreement?

22 A No.

23 Q You're saying it was an understanding
24 between Watchtower and PCUS?

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1 A Yes.

2 Q So you don't know whether Wayne Rittenbach
3 had authority to contact PCUS directly?

4 A I don't, no.

5 Q This conversation with Ray Mundt, was it?

6 A Yes.

7 Q You say you don't remember when that
8 occurred. Would that have been probably early 90's
9 sometime?

10 A Late 80's.

11 Q I assume, I think it's clear from
12 Paragraph 16 in your complaint, that you're not
13 alleging any violation, for lack of a better term,
14 of any alleged promises by PCUS until 1999, 2000?

15 A That I'm not alleging what, any promises?

16 Q You're not alleging that PCUS or Unisource
17 violated any promises until 1999?

18 A Not to my knowledge.

19 Q If you turn back, Mr. Henwood, to Page 15,
20 this is where I want to come back, to be sure we
21 talked about all the promises that you're alleging.

22 Paragraph 59 refers to -- it says
23 promises with regard to, A, support from plaintiff's
24 exclusive relationship with the Watchtower as well

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1 as, B, not interfering with the plaintiff's
2 relationship with the Watchtower or his Watchtower
3 commissions as alleged above.

4 Is there anything else, any other
5 promises that you're alleging were made to you other
6 than those that we've already talked about, that
7 you're saying Mr. Fitzgerald made to you?

8 A Not that I recall.

9 Q At the bottom of Paragraph 60 you've
10 alleged that you elected to remain employed by
11 defendants instead of pursuing other employment
12 opportunities and taking the Watchtower account with
13 you.

14 Was there -- and we've already talked
15 about that to an extent but was there any time
16 during your employment with PCUS or Unisource that
17 you sought other employment?

18 A No.

19 Q In Paragraph 61 you state, about half-way
20 down, alternatively he could, referring to you, he
21 could and would have taken other defensive actions
22 to avoid the sabotage of his beneficial relationship
23 with Watchtower.

24 What is that referring to, defensive

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1 actions?

2 A Well I would have pursued other employers
3 before I went to PCUS, if we hadn't had these
4 understandings.

5 Q I think this is referring to in 1999?

6 A No, I think this is referring to before I
7 started employment.

8 MR. YOUNG: Why don't you take a
9 minute and just read Paragraph 60 and 61? I think
10 Mr. Sullivan's correct.

11 Q Yes, I'm not trying to put you on the
12 spot, I'm just curious if you can elaborate as to
13 what that means.

14 A Well, I understand what you're driving at.
15 The normal means of -- the normal means of
16 defensive action would be to go to the immediate
17 superior, which in this particular case was
18 Romanux, and begin the process of meeting with the
19 people above him or whoever would be apropos for the
20 circumstances at hand.

21 Q To take some action with respect to the
22 Watchtower account?

23 A Well, yes, to take action initially to
24 develop a collective strategy on how to proceed.

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1 Q The promissory estoppel count has been
2 added to your complaint, I guess to your first
3 amended complaint.

4 Is there any different relief that
5 you're seeking, based on the promissory estoppel
6 claim, then what we've already talked about in your
7 deposition before?

8 MR. YOUNG: Objection, to the extent
9 it calls for a legal conclusion.

10 Q You can answer. I'm just asking, is there
11 anything else that you're claiming? I'm not going
12 to elaborate.

13 You have commission payments that
14 were, well, for the period of time in 2000 that
15 Watchtower was working with Webservice and then the
16 payments that were made by Fraser to Webservice.

17 We talked about all that stuff, in
18 terms of what you're seeking.

19 Is there anything different from
20 that, that you're seeking, based on your promissory
21 estoppel claim?

22 MR. YOUNG: Can I just clarify, other
23 than what we're claiming with respect to the other
24 accounts?

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1 MR. SULLIVAN: Yes.

2 A Well, I'm not an attorney so I'm not able
3 to completely flush out estoppel but if there are
4 additional -- if there's additional relief that is
5 possible because of this, I would seek that.

6 Q But what you're seeking has been in the
7 complaint?

8 A Yes.

9 Q I think I'm asking you something we
10 already talked about but for some reason I can't
11 remember your answer.

12 In the year 2000, and pardon me for
13 being repetitive, couldn't you have at that point
14 gone to Watchtower and said, look, I'm going to
15 change employers, I want you all to come with me to
16 a different employer?

17 A I don't believe so because I did not know
18 the nature of what had transpired or what actions
19 Unisource had taken. So I had no means of knowing
20 completely and clearly the damage that had been
21 done, other than to know that damage was ongoing.

22 And that's why I wrote the letters to
23 Stewart and so forth, to try to find out what was
24 going on. Would have been operating in the dark at

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1 that point.

2 Q I guess what I'm asking is why would any
3 steps -- we've already gone over what your
4 allegations are, as far as Unisource and Webservice
5 with respect to the Watchtower account but why would
6 any actions taken by Unisource impact your ability
7 to go to Watchtower and go to a different employer?

8 A Unisource, Georgia-Pacific could have said
9 no matter what price Henwood comes up with of a
10 subsequent supplier, we'll beat it by a hundred
11 dollars a ton.

12 That would make it impossible.

13 Q But that's speculation on your part,
14 right?

15 A Right, but that's what you asked me to do.

16 Q I'm basing it on your earlier testimony
17 that when you talked to Rittenbach he said, we're
18 not blaming you for this, we'll continue working
19 with you as long as Romanaux is not involved.

20 I'm just wondering why that would not
21 have been the case thereafter?

22 A Because the underlying circumstance was
23 that we had developed Fraser as a good supplier or
24 as a competent supplier and so our efforts were

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1 still directed towards that situation and
2 maintaining them as a supplier and until that had
3 been exhausted there wouldn't be any point in going
4 further.

5 Q Any point in going further?

6 A There wouldn't be any point in trying to
7 take the account elsewhere, as long as there was an
8 apparent possibility of maintaining Fraser as a
9 supplier.

10 Q Well I don't mean to beat a dead horse but
11 I guess what I'm asking you is if you felt like in
12 the year 2000 after, for example, your January 25th
13 phone call with Jim O'Toole, that we already had
14 testimony about, if you felt like at that point that
15 Unisource had mishandled the relationship with
16 Watchtower and Fraser, couldn't you have gone to a
17 different employer, taken Watchtower and continued
18 working with Fraser?

19 A Well, first of all, I did not know the
20 extent of the circumstances that existed within
21 Unisource, who was saying what to who and so forth.

22 That's what I was trying to establish
23 and it would have been jumping the gun in my view to
24 have been that precipitous after 15 years of effort

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1 of developing a supplier without having exhausted
2 all of the normal avenues of strategizing and,
3 frankly, I thought O'Toole was sincere in his
4 efforts initially to try and find out what had
5 occurred internally and correct it.

6 And so I felt it was prudent to do
7 that rather than try and take the account elsewhere.
8 It's an enormous task.

9 Q Just real quickly, Mr. Henwood, I want to
10 ask you about --

11 MR. SULLIVAN: Again, I don't think -
12 - this is Mr. Henwood's affidavit in opposition to
13 defendant's motion for summary judgment, so I don't
14 think we need to mark this as an exhibit.

15 MR. YOUNG: Dated January 8, 2004?

16 MR. SULLIVAN: Yes.

17 Q Mr. Henwood, if you'll just take a look at
18 this, take your time, I'm not going to ask you a
19 whole lot about it.

20 A All right.

21 Q Actually, you can stay right where you are
22 for a second on Page 9.

23 A Okay.

24 Q That's your signature?

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1 A Yes.

2 Q I take it the statements in here are true,
3 to the best of your knowledge?

4 A Yes.

5 Q If you will look at the bottom of Page 2,
6 Paragraph 7, the very last line in Paragraph 7 says
7 to the contrary he, referring to Robert Fitzgerald?

8 A Yes.

9 Q Told me that PCUS would compensate me in
10 my commission rate for all profit falling to the
11 company from revenues generated from my customers.

12 And I assume what you're talking
13 about there is based on your efforts with the
14 customer, correct?

15 A Yes.

16 Q In Paragraph 9, you state that -- the
17 second sentence, several lines long, Mr. Fitzgerald
18 also stated I will be provided with all of the
19 typical benefits provided to a paper sales
20 representative -- and then there's sort of a list of
21 items including health insurance, et cetera?

22 A Yes.

23 Q I take it you received all these things?

24 A Yes.

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1 MR. SULLIVAN: I don't have any
2 further questions.

3 MR. YOUNG: I think I may have a few
4 follow-ups, if we can go off the record?

5 (Recess)

6 MR. YOUNG: I just have a few follow-
7 up questions.

8

9 CROSS EXAMINATION

10 BY MR. YOUNG:

11 Q Mr. Henwood, I believe the question Mr.
12 Sullivan asked you was, something along the lines,
13 did your experience at A.T. Clayton make you more
14 suspicious of employers?

15 Do you recall that question?

16 A Yes.

17 Q I believe you answered it no, is that
18 correct?

19 A Yes.

20 Q Were you already suspicious of employers
21 at that time?

22 A Well I was a lot more knowledgeable,
23 having gone through a bit of experience with A.T.
24 Clayton, and then there was the normal course of

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1 associating with other people in the industry; the
2 subject matter came up.

3 So I was -- I knew it was a question
4 that needed to be asked and so I was -- I don't want
5 to say I was weary but I was just informed better.

6 Q Mr. Sullivan asked you the question about
7 the number of conversations you had with Mr.
8 Fitzgerald and I believe you testified it was more
9 than one, is that correct?

10 A Yes.

11 Q Can you give an approximate idea for us of
12 how many it was?

13 A My best recollection is, between personal
14 visits and phones, probably eight or nine.

15 Q That was with Mr. Fitzgerald, pre-
16 employment?

17 A Yes.

18 Q I believe you testified with respect to
19 your ability to bring the Watchtower account to PCUS
20 that one basis for that belief was that the supplier
21 was failing, is that correct?

22 A Yes.

23 Q Other than the fact the supplier was
24 failing, was there anything else that led you to

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1 believe that the Watchtower account would come with
2 you or made you think the Watchtower account would
3 come with you?

4 A Yes, because I had, as a normal part of my
5 activities as a salesman, made it my business to
6 keep as close tabs on other potential suppliers, not
7 only just the paper mills but paper merchants.

8 That initially got started because
9 the industry was beginning to bring paper in from
10 overseas, so you have to concern yourself not only
11 with domestic but foreign suppliers.

12 And it was important that --
13 absolutely had to keep tabs on what the pricing and
14 quality levels were of potential other suppliers in
15 order to maintain your business, whether it was with
16 Watchtower or anybody else.

17 It was really the salesmanship that
18 went along with that.

19 Q In addition to that, did you also have a
20 personal relationship at Watchtower that made you
21 believe they would follow you?

22 A Yes.

23 Q With whom did you have those personal
24 relationships?

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1 A Primarily with Max Larson, Calvin Schiff,
2 Ralph Lindem; those three in particular.

3 Q You were asked by Mr. Sullivan if you were
4 concerned about other reps at PCUS taking your place
5 on the Watchtower if you brought the account with
6 you.

7 A No.

8 Q Why weren't you concerned about that?

9 A Mr. Fitzgerald, in our discussions,
10 brought up the fact that he had a salesman, Dan
11 Romanaux, calling on Watchtower to try to get the
12 business that I had at A.T. Clayton, get that
13 business away along with other business Watchtower
14 had, and that he would take him off that account and
15 that no one else would interfere with my activities
16 there.

17 I had no knowledge that Romanaux was
18 calling on Watchtower, so it wasn't anything that I
19 brought up. He brought it up.

20 Q With respect to that statement by Mr.
21 Fitzgerald, before you commenced your employment,
22 and all the other statements you testified to today
23 and previously, did you rely upon those statements
24 in accepting the job with PCUS?

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1 A Yes.

2 Q You were asked a hypothetical question,
3 which I know you had some problems with, from Mr.
4 Sullivan about if those statements hadn't been made
5 would you have taken the job and you were unable to
6 answer that question but if forgetting those
7 statements being made, if you hadn't been
8 comfortable with the level of support and
9 exclusivity that had been promised by PCUS, would
10 you have taken the job at PCUS?

11 MR. SULLIVAN: Objection, calls for
12 speculation.

13 A No.

14 Q Looking at the amended complaint,
15 Paragraph 60, this is a duplicate of what I just
16 asked you but plaintiff believed and relied on those
17 commitments and accepted the arrangement proposed by
18 the company.

19 Can you tell me how you relied on
20 those commitments or promises that Mr. Fitzgerald
21 had made to you?

22 MR. SULLIVAN: Objection, asked and
23 answered.

24 Q You can answer.

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1 A Just by virtue of accepting the job and
2 beginning the effort to develop sales for the
3 company and seeing is he and the people that worked
4 for him, seeing how they responded, what assistance
5 they gave.

6 Q Then just referring to Paragraph 61, on
7 Page 15, with respect to the last sentence of that
8 paragraph, you were asked a question about -- you
9 testified in response to a question by Mr. Sullivan
10 with respect to defensive actions you would have
11 taken at PCUS or Unisource.

12 Were there defensive actions you
13 would have taken elsewhere?

14 A Yes.

15 Q What would those have been?

16 A They would have been with Watchtower and
17 with the supplier if it involved a supplier.

18 MR. YOUNG: I don't think I have any
19 other questions.

20 MR. SULLIVAN: Just to follow up on
21 that question.

22

23

24

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1 RE-DIRECT EXAMINATION

2 BY MR. SULLIVAN:

3 Q What defensive actions would you have
4 taken with Watchtower?

5 A Well it would depend on the circumstance,
6 what the problem was.

7 The first thing would be to, for
8 instance, -- well it would depend on what the
9 problem was. I would have met with those at
10 Watchtower that would be pertinent to whatever their
11 circumstances happened to be.

12 Q Are you thinking of a particular problem
13 when you're referring to defensive actions here in
14 your complaint?

15 A A particular one? No, not a particular
16 one.

17 MR. SULLIVAN: Okay, no further
18 questions.

19 MR. YOUNG: Thank you.

20 (Whereupon, the deposition was
21 concluded at 12:26 o'clock P.M.)

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